



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

HD:hd  
Docket No: 00147-00  
17 August 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: CDR [REDACTED], USN [REDACTED]  
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 29 Dec 99 w/attachments  
(2) PERS-311 memo dtd 28 Apr 00  
(3) PERS-86 memo dtd 7 Jun 00  
(4) Subject's ltr dtd 11 Jul 00 w/enclosures  
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the fitness report for 1 September 1998 to 30 April 1999, a copy of which is at Tab A. Petitioner impliedly requested removing his failures of selection before the Fiscal Year (FY) 00 and 01 Naval Reserve Line Captain Selection Boards and granting review of his record before a special selection board.

2. The Board, consisting of Messrs. Beckett, McPartlin and Whitener, reviewed Petitioner's allegations of error and injustice on 10 August 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner contends that the reporting senior's statements in the contested fitness report are false and unsubstantiated by actions on Petitioner's part and are, therefore, unjust. He contends that the supporting statements he provided (enclosures (14) through (18) to his application) and the investigation at enclosure (11) to his application refute the fitness report

and the reporting senior's nonpunitive letters of caution to Petitioner dated 9 October 1998 and 1 April 1999 (enclosures (12) and (13) to his application). He states he was never counseled at any time and that the unfavorable comments in the fitness report came as a complete surprise. He asserts that all his actions cited in the nonpunitive letter of caution dated 1 April 1999 had been concurred in by his superiors. He further contends that the fitness report at issue was submitted in error, in that the report and the letter of 1 April 1999 were based on a Judge Advocate General Manual investigation report dated 19 March 1999 to which he had repeatedly been denied access; and that his not having been permitted to review the investigation denied him the ability to provide an effective rebuttal to the fitness report. He objects that significant accomplishments were not mentioned. He further objects that the reporting senior failed to comment, as required by Bureau of Naval Personnel Instruction 1610.10, enclosure (2), paragraph N-11.a, on Petitioner's retention efforts, and failed to evaluate his retention as directed by the reporting senior's superior (enclosure (20) to his application refers). He notes that the reporting senior included, in an earlier version of the fitness report, the comment that he had erred by marking Petitioner favorably in the prior report. Finally, he argues that the reporting senior unfairly included officers senior to Petitioner in his statement that Petitioner was the worst leader among the commanding officers who had reported to him in the previous three years.

d. The contested fitness report, submitted on the occasion of Petitioner's detachment, evaluated his performance as the commanding officer (CO) of the Naval Reserve Center (NRC) Kansas City, Missouri. The report reflects one mark of "5.0" (best), in block 33 ("Professional Expertise"); one "4.0" (second best), in block 37 ("Mission Accomplishment and Initiative"); two "3.0" (third best), in blocks 34 ("Equal Opportunity") and 35 ("Military Bearing/Character"); and two "1.0" (lowest/adverse), in blocks 36 ("Teamwork") and 38 ("Leadership"). Block 40 (career recommendations) indicates "staff officer." In "Promotion Recommendation," Petitioner is marked alone in the "Significant Problems" block, another adverse mark. The narrative, which is not entirely unfavorable, includes the following:

...his poor judgment and lack of leadership created significant problems at his command...

[Petitioner's] management of administrative programs has generally achieved satisfactory results, but at the expense of his people. His repressive management style caused low morale and internal conflict. Poor judgment, lack of basic leadership skills and refusal to take responsibility for his actions demoralized his people. [Petitioner] is the worst leader of the 40-50 commanding officers, both ashore and afloat, who have reported to me in the last 3 years.

e. Enclosures (14) through (18) to Petitioner's application are letters in support of his request. Enclosure (14) is a letter dated 29 April 1999 from a Naval Reserve captain refuting the statement, in the nonpunitive letter of caution dated 1 April 1999, that Petitioner became "furious" at this officer, the senior member of an administrative board, for granting

a request for a continuance at the board. He concedes they did disagree on the specific actions this officer had elected to take as senior member of the board, but adds that this discussion was handled in a respectful manner. He further states that "At no time did I feel [Petitioner] was usurping my authority or seniority." He says that while Petitioner was disappointed with his decision, he was not "furious" at him. Finally, he says he distinctly recalls that they parted amicably and that this officer "harbored no ill feelings." Enclosure (15) is a letter dated 29 April 1999 from a chief yeoman refuting the statement, in the letter of 1 April 1999, that Petitioner "yelled at" him for voting to grant a continuance at the same administrative board. He says Petitioner did not "chastise" him regarding his vote. Enclosure (16) is a letter dated 24 April 1999 from the command master chief, who states that Petitioner is the finest CO with whom he has ever served at NRC Kansas City since he began drilling there in 1982. He states there has never been a higher level of harmony and teamwork among all the 600-plus members of the command, both active and reserve; that Petitioner is a leader he respects; and that NRC Kansas City is far better today for having Petitioner in command than before Petitioner arrived. Finally, he states he was present at Petitioner's meetings with the two individuals who submitted the letters described above, and that at no time did Petitioner criticize them or behave in any way that was unprofessional. Enclosure (17) is a letter dated 29 April 1999 from a chief petty officer stating that he had served under Petitioner since 15 January 1998, and that as the leading chief petty officer for the full-time staff at NRC Kansas City, he considered morale within the command to have been excellent during the past eight months. Enclosure (18) is a letter dated 29 April 1999 from the executive officer (XO), who states that he has served under Petitioner for 20 months and can unequivocally say NRC Kansas City is far better today than when the XO started. He says this is a direct result of Petitioner's foresight, leadership and managerial skills. He asserts that the reporting senior's statement, in the contested fitness report, regarding the demoralization of the staff and the accomplishment of administrative tasks at the expense of the crew is false. He says Petitioner's achievements "lead one to believe they are not the actions of a demoralized crew but of a highly motivated crew and they did not occur at the expense of the staff." He credits Petitioner for teaching him many aspects of leadership, and concludes it is because of that leadership NRC Kansas City is in such a high state of readiness. Finally, he says he too was present at the meetings with the senior member of the administrative board and the chief yeoman "and at no time did [Petitioner] yell at, nor was he furious with, either of these individuals. In fact, he did not address [the chief yeoman] at all."

f. In correspondence attached as enclosure (2), PERS-311, the Navy Personnel Command (NPC) office having cognizance over officer fitness reports, has commented that Petitioner does not prove the contested fitness report to be unjust or in error, and they recommended that his record remain unchanged. They stated that the reporting senior clearly explains in the comment section of the fitness report, as well as in his endorsement on Petitioner's rebuttal, his reason for writing the report as he did. While acknowledging that Petitioner had provided several letters of support reflecting favorably on his performance and character, PERS-311 added "However, these individuals were not responsible for assigning his work or evaluating his performance during the period of the report."

g. In correspondence attached as enclosure (3), PERS-86, the NPC office having cognizance over Naval Reserve officer promotions, has commented "It is our opinion that the [contested fitness] report did have a significant detrimental impact on [Petitioner's] promotion potential, and that it was probably a major contributing factor in his failure to select by the FY-00 and FY-01 promotion selection boards." They add that in the absence of a finding of wrong per Article 138, Uniform Code of Military Justice, they are unable to determine if the report is unjust or in error, but if this Board finds that a wrong has been committed, they would recommend removal of the report and "the failures of select subsequent to the completion of that report, and that [Petitioner] be considered for promotion by a special selection board."

h. Petitioner's letter at enclosure (4) reflects his disagreement with enclosure (2). He states his position is that the general and negative statements in the fitness report at issue are unfounded and false. He maintains that he did provide substantial and material evidence in the form of statements from every member in a leadership position in his command to establish that his leadership was outstanding, and he says he sees no evidence to the contrary in the record of his case. He objects that while readiness, retention, awards, mission effectiveness and community involvement traditionally are considered to be "hallmarks" of command performance, the reporting senior largely ignored these objective achievements in favor of general and unjustifiable comments regarding his leadership. Finally, he alleges that these customary and even required comments were excluded because they would have contradicted the reporting senior's unsubstantiated and negative opinions.

i. The FY 00 Naval Reserve Line Captain Selection Board convened on 19 January 1999 and adjourned on 25 January 1999.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the contents of the PERS-311 advisory opinion at enclosure (2), the Board finds the existence of an injustice warranting partial relief, specifically, removal of the contested fitness report and Petitioner's failure of selection before the FY 01 Naval Reserve Line Captain Selection Board.

In finding that the contested fitness report should be removed, the Board finds the supporting statements, particularly those from the command master chief and XO (enclosures (16) and (18) to Petitioner's application), persuasive. While PERS-311 may be correct in stating that these individuals were not responsible for assigning Petitioner's work or evaluating his performance, the Board is satisfied that they would have been in a position to assess morale under his command.

Contrary to the PERS-86 advisory opinion at enclosure (3), the Board finds that Petitioner's failure of selection by the FY 00 Naval Reserve Line Captain Selection Board should stand. They note that the contested fitness report was not submitted until after this board had

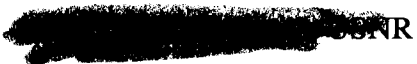
adjourned on 25 January 1999. The Board agrees with PERS-86 in finding that the FY 01 failure of selection should be removed.

Contrary to the PERS-86 advisory opinion, the Board finds that a special selection board should not be approved. They find that Petitioner's consideration by the next regular promotion board, with a corrected fitness report record, will provide him adequate relief.

In view of the above the Board recommends the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following fitness report and related material:

Date of Report	Reporting Senior	Period From	of Report To
99Apr16	 BNR	98Sep01	99Apr30

b. That there be inserted in Petitioner's naval record a memorandum in place of the removed report containing appropriate identifying data concerning the report; that the memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the report.

c. That Petitioner's record be corrected to show he did not fail of selection by the FY 01 Naval Reserve Line Captain Selection Board.

d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.


f. That the remainder of Petitioner's request be denied.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

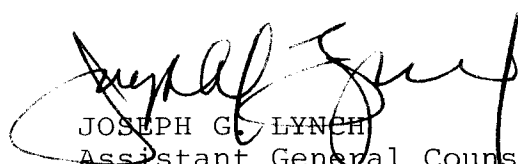
  
JONATHAN S. RUSKIN  
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

  
W. DEAN PFEIFFER

Reviewed and approved:

OCT 31 2000

  
JOSEPH G. LYNCH  
Assistant General Counsel  
Manpower and Reserve Affairs



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND  
5720 INTEGRITY DRIVE  
MILLINGTON TN 38055-0000

147-00  
1610  
PERS-311  
28 April 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: CDR [REDACTED], USN [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 1 September 1998 to 30 April 1999.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the fitness report in question to be on file. It is signed by the member acknowledging the contents of the report and his right to submit a statement. The member indicated he did desire to submit a statement. The member's statement and reporting senior's endorsement is not reflected in the member's record, however, he provided a copy with his petition. We are in the process of having it placed in the member's digitized record.

b. Commander [REDACTED] requests the removal of the fitness report in question due to errors and an injustice to him. Evaluating a subordinate officer's performance and making recommendations concerning promotion and assignments are the responsibilities of the reporting senior. The duties are accomplished in the fitness report. In viewing petitions that question the exercise of the reporting senior's evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. We must see if there is any rational basis to support the reporting senior's decision, and whether the reporting senior's actions were the result of improper motive. However, we must start from the position that the reporting senior exercised his/her discretion properly. Therefore, for us to recommend relief, the petitioner has to demonstrate that the reporting senior did not properly exercise his/her authority. The petitioner must show that the reporting senior acted for an illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion. I do not believe Commander [REDACTED] has done so.

c. The fitness report appears to be procedurally correct. The reporting senior is charged with commenting on the performance or characteristics of an officer under his command and

determines what material will be included in a fitness report. The reporting senior clearly explains in the comment section of the fitness report, as well as his endorsement, his reason for writing the report as he did.

d. Whether the member was counseled or weaknesses discussed with him, or he was given an opportunity to make a statement does not invalidate the fitness report.

e. A fitness report does not have to be consistent with previous or subsequent reports. It represents the judgment and appraisal responsibility of the reporting senior. However, where a significant change occurs between reports by the same reporting senior, the reporting senior should explain what prompted the significant change in the member's fitness report. In this case the reporting senior made it clear why he issued the report which showed a significant decline in performance.

f. Commanders [REDACTED] provided several commendatory letters of support in his petition, which reflect favorably on his performance and character. However, these individuals were not responsible for assigning his work or evaluating his performance during the period of the report.

g. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.

[REDACTED]  
D. [REDACTED]  
Head, Performance  
Evaluation Branch





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147-00

5420  
PERS-86

JUN 7 2000

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF  
CDR [REDACTED], USNR [REDACTED]

Encl: (1) BCNR File 00147-00 w/Service Record

1. We are returning enclosure (1) with the following observations and recommendations.
2. Commander [REDACTED] requests removal of a fitness report on the basis that the report is unjust and in error.
3. Commander [REDACTED] was properly considered by the FY-00 and FY-01 Naval Reserve Captain Line Promotion Selection Boards and was not selected for promotion by either board.
4. Specific reasons for Commander [REDACTED] failure to select are not available since board proceedings are sensitive in nature and records of proceedings are not kept. However, it is our opinion that the report did have a significant detrimental impact on Commander [REDACTED] promotion potential, and that it was probably a major contributing factor in his failure to select by the FY-00 and FY-01 promotion selection boards. Since the statement that Commander [REDACTED] submitted in rebuttal to the fitness report was not a part of the record, the promotion selection board did not consider it.
5. In the absence of a finding of wrong per UCMJ Art. 138 we are unable to determine if the fitness report in question is unjust or in error. If the Board for Correction of Naval Records finds that a wrong has been committed we would recommend removal of the fitness reports in question and the failures of select subsequent to the completion of that report, and that Commander [REDACTED] be considered for promotion by a special selection board.

[REDACTED]  
[REDACTED]  
Director, Reserve Officer  
Promotions, Appointments, and  
Enlisted Advancement Division